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EXAMINER

VETTER, DANIEL

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS  
5 AND INTERFERENCES  
6

7  
8 *Ex parte* CHUN-HEE SONG  
9

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11 Appeal 2009-001764  
12 Application 10/653,929  
13 Technology Center 3600  
14

15  
16 Decided: December 22, 2009  
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18  
19 Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and BIBHU R.  
20 MOHANTY, *Administrative Patent Judges*.  
21 FETTING, *Administrative Patent Judge*.

22 DECISION ON APPEAL  
23

1 STATEMENT OF THE CASE

2 Chun-Hee Song (Appellant) seeks review under 35 U.S.C. § 134 (2002)  
3 of a final rejection of claims 1-3 and 9-10, the only claims pending in the  
4 application on appeal.

5 We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)  
6 (2002).

7 SUMMARY OF DECISION<sup>1</sup>

8 We AFFIRM.

9 THE INVENTION

10 The Appellant invented a method and apparatus for preventing a  
11 duplicate recording of a broadcasting program on a recording unit using  
12 additional information included in broadcasting signals (Specification ¶¶ 02).

13 An understanding of the invention can be derived from a reading of  
14 exemplary claims 1 and 10, which are reproduced below [bracketed matter  
15 and some paragraphing added].

16 1. A method of preventing a duplicate recording of a  
17 broadcasting program, comprising:

18 [1] extracting additional information from a digital  
19 broadcasting program and recording the additional information

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<sup>1</sup> Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed April 16, 2008) and the Examiner's Answer ("Ans.," mailed June 11, 2008), and Final Rejection ("Final Rej.," mailed September 12, 2007).

1 separately in an additional information storage unit, the  
2 additional information including title information and summary  
3 information;

4 [2] before entering a recording mode, reading the additional  
5 information corresponding to a to-be-recorded broadcasting  
6 program from the additional information storing unit;

7 [3] searching a recording unit and determining whether the  
8 recording unit stores title information corresponding to the to-  
9 be-recorded broadcasting program;

10 [4] if the title information corresponding to the to-be-  
11 recorded broadcasting program is detected from the recording  
12 unit, comparing summary information included in the read  
13 additional information with that stored in the recording unit in  
14 connection with the detected title information, and then  
15 calculating a correspondence ratio; and

16 [5] comparing the calculated correspondence ratio with a  
17 predetermined reference value, and if the correspondence ratio  
18 is less than the predetermined reference value, entering the  
19 recording mode to enable recording of the to-be-recorded  
20 broadcasting program on the recording unit.

21  
22 10. The method of claim 9, wherein the title information  
23 includes information on a sequence number of the to-be-  
24 recorded broadcasting program.

25  
26 THE REJECTIONS

27 The Examiner relies upon the following prior art:

Yap et al.	US 2001/0033736 A1	Oct. 25, 2001
Agnihotri et al.	US 2002/0081090 A1	Jun. 27, 2002
Kanemitsu	US 6,854,127 B1	Feb. 8, 2005

1 Claims 1-3 and 9 stand rejected under 35 U.S.C. § 103(a) as  
2 unpatentable over Yap and Agnihotri.

3 Claim 10 stands rejected under 35 U.S.C. § 103(a) as unpatentable over  
4 Yap, Agnihotri, and Kanemitsu.

5

6 ISSUES

7 The issues pertinent to this appeal are:

- 8 • Whether the Appellant has sustained the burden of showing that the  
9 Examiner erred in rejecting claims 1-3 and 9 under 35 U.S.C. § 103(a)  
10 as unpatentable over Yap and Agnihotri.

11 ○ This pertinent issue turns on whether Yap and Agnihotri  
12 describe limitations [1] and [4] of claim 1.

- 13 • Whether the Appellant has sustained the burden of showing that the  
14 Examiner erred in rejecting claim 10 stands rejected under 35 U.S.C.  
15 § 103(a) as unpatentable over Yap, Agnihotri, and Kanemitsu.

16 ○ This pertinent issue turns on whether the Appellant's arguments  
17 in support of claim 9 are found persuasive.

18

19 FACTS PERTINENT TO THE ISSUES

20 The following enumerated Findings of Fact (FF) are believed to be  
21 supported by a preponderance of the evidence.

22 *Facts Related to the Prior Art*

1        *Yap*

2            01.    Yap is directed to video-on-demand equipment and services.

3            Yap ¶ 0002.

4            02.    Yap describes an electronic program guide (EPG) that interacts

5            with the system. Yap ¶ 0058. The EPG is enhanced with tags,

6            which include data that is associated with or otherwise describes

7            the content of a video selection. Yap ¶ 0060. For example, a tag

8            may include movie data such as starring actors, the director,

9            program title, a synopsis, release date, reviews, related programs,

10           sequels, keywords, a thumbnail, a preview, or a snippet (Yap ¶

11           0060 and ¶ 0131). The system scans the EPG for tagged content

12           thereby allowing a user to search the EPG based on a tag or a

13           combination of tags. Yap ¶ 0061 and ¶ 0131. Tags may be in-

14           band or otherwise transmitted with the content. Yap ¶ 0060.

15           Alternatively, tags maybe associated with the program or

16           otherwise sent separately such as with the electronic program

17           guide. Yap ¶ 0060.

18           03.    The system further includes a duplicate episode filter. Yap ¶

19           0133. When a user selects to record a program, the system

20           references the storage device to check certain characteristics of the

21           selected program with information stored in memory. Yap ¶

22           0133. The system compares selected tag information with stored

23           tag information to determine if a match exists. Yap ¶ 0134. If a

24           matched is found in the memory, a duplicate notification is

25           displayed to a user. Yap ¶ 0133. The system further includes the

1 ability to simultaneously record a program and playback another  
2 previously recorded program. Yap ¶ 0139.

3 *Agnihotri*

4 04. Agnihotri is directed to a system and method for determining  
5 whether a video program has been previously recorded by a video  
6 recorder (Agnihotri ¶ 0001).

7 05. The system comprises a transcript processor that obtains a  
8 transcript of an incoming video program by assembling the  
9 transcription from closed caption text, text from a speech to text  
10 converter, text from a third party source, or embedded screen text  
11 (Agnihotri ¶ 0012). The transcript processor then compares the  
12 transcript of the incoming video program with transcripts of video  
13 programs that have been previously recorded by the video  
14 recorder in order to determine whether the incoming video  
15 program has been previously recorded by the video recorder  
16 (Agnihotri ¶ 0012). If the program has been previously recorded,  
17 then it is not recorded a second time (Agnihotri ¶ 0012).

18 06. When a video program ends, the video recorder controller stops  
19 recording the video and assembles a transcript of the newly  
20 recorded video (Agnihotri ¶ 0053). The new transcript is added to  
21 a transcript database located in a plurality of transcript storage  
22 locations (Agnihotri ¶ 0053). The controller may further send the  
23 transcript to a hard disk to for storage (Agnihotri ¶ 0053).

1        *Kanemitsu*

2            07. Kanemitsu is directed to an improvement in recording  
3            functionality of broadcast content in a broadcast receiving  
4            apparatus (Kanemitsu 1:7-11).

5        *Facts Related To The Level Of Skill In The Art*

6            08. Neither the Examiner nor the Appellant has addressed the level  
7            of ordinary skill in the pertinent art video broadcasting and  
8            receiving systems. We will therefore consider the cited prior art as  
9            representative of the level of ordinary skill in the art. *See Okajima*  
10           *v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he  
11           absence of specific findings on the level of skill in the art does not  
12           give rise to reversible error ‘where the prior art itself reflects an  
13           appropriate level and a need for testimony is not shown’”) (quoting  
14           *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755  
15           F.2d 158, 163 (Fed. Cir. 1985).

16        *Facts Related To Secondary Considerations*

17            09. There is no evidence on record of secondary considerations of  
18            non-obviousness for our consideration.

19                            PRINCIPLES OF LAW

20        *Obviousness*

21            A claimed invention is unpatentable if the differences between it and  
22            the prior art are “such that the subject matter as a whole would have been  
23            obvious at the time the invention was made to a person having ordinary skill



1 in the art.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007); *Graham*  
2 *v. John Deere Co.*, 383 U.S. 1, 13-14 (1966).

3 In *Graham*, the Court held that that the obviousness analysis is  
4 bottomed on several basic factual inquiries: “[ (1) ] the scope and content of  
5 the prior art are to be determined; [ (2) ] differences between the prior art and  
6 the claims at issue are to be ascertained; and [ (3) ] the level of ordinary skill  
7 in the pertinent art resolved.” *Graham*, 383 U.S. at 17. *See also KSR*, 550  
8 U.S. at 406. “The combination of familiar elements according to known  
9 methods is likely to be obvious when it does no more than yield predictable  
10 results.” *KSR*, 550 U.S. at 416.

## 11 ANALYSIS

12 *Claims 1-3 and 9 rejected under 35 U.S.C. § 103(a) as unpatentable*  
13 *over Yap and Agnihotri*

14 The Appellant first contends that (1) Yap and Agnihotri fail to describe  
15 extracting additional information from a digital broadcasting program and  
16 recording the additional information separately, as required by limitation [1]  
17 of claim 1. App. Br. 10-13. We disagree with the Appellant. Yap describes  
18 an electronic program guide that interacts with the system and categorizes  
19 information in the digital broadcast. FF 02. Yap further describes that  
20 information from a digital broadcasting program that is associated with the  
21 electronic program guide is stored in tags. FF 02. The tag is either in-band,  
22 transmitted and associated with the program itself, or can be sent separately  
23 such as with the electronic program guide. FF 02. The Appellant argues  
24 that the tags are not extracted from the program (App. Br. 11), however, a  
25 person with ordinary skill in the art would have known that in order to use

1 tags that are in-band, the tags must be extracted from the band. The  
2 Appellant further contends that the tags are provided by an outside source.  
3 App. Br. 11. The claim does not require specific origin for the extracted  
4 information and as such the Appellant's argument that the tag is provided by  
5 an outside source is not persuasive.

6 Agnihotri describes a system that assembles a transcript of a program  
7 and stores the transcript separately from the program in a transcript database.  
8 FF 05-06. The transcript is additional information of a digital broadcasting  
9 program and assemble of such information requires an extraction of  
10 information from the broadcast program. Agnihotri explicitly describes that  
11 the transcripts are stored in a transcripts database and other storage locations  
12 such as on hard disk. FF 06. As such, Yap and Agnihotri describe  
13 extracting additional information from a digital broadcast program and  
14 storing the additional information separately, required by claim 1.

15 The Appellant also contends that (2) Yap fails to describe that two  
16 separate characteristics are used in determining if a duplicate program exists,  
17 as limitation [4] of claim 1 requires a match between title information and  
18 summary information. App. Br. 13. We disagree with the Appellant. Yap  
19 describes a duplicate episode filter feature that determines whether a  
20 program selected for recording already exists in memory. FF 03. Yap  
21 specifically describes that characteristics, such as tag information, can be  
22 used to determine whether a match exists. FF 03. Yap further describes that  
23 tag characteristics for title information and a synopsis are provided for  
24 programs. FF 02. That is, certain characteristics, such as title and synopsis  
25 information, can be used to determine whether a match for a program  
26 selected for recording already exists. The Appellant contends that Yap is

1 only concerned with matching a single characteristic (App. Br. 13),  
2 however, Yap describes that multiple characteristics for a program can be  
3 used to determine if a match exists (FF 03). As such, Yap describes  
4 comparing title and summary information to determine whether a match  
5 exists.

6 The Appellant has not sustained the burden of showing that the  
7 Examiner erred in rejecting claims 1-3 and 9 under 35 U.S.C. § 103(a) as  
8 unpatentable over Yap and Agnihotri.

9  
10 *Claim 10 rejected under 35 U.S.C. § 103(a) as unpatentable over Yap,*  
11 *Agnihotri, and Kanemitsu*

12 The Appellant contends that claim 10 depends from claim 9 and is  
13 patentable for the same reasons asserted in support of claim 9 *supra*. App.  
14 Br. 14. We disagree with the Appellant. The Appellant's arguments in  
15 support of claim 9 were not found to be persuasive *supra* and are not  
16 persuasive here for the same reasons. As such, the Appellant has not  
17 sustained the burden of showing that the Examiner erred in rejecting claim  
18 10 under 35 U.S.C. § 103(a) as unpatentable over Yap, Agnihotri, and  
19 Kanemitsu.

20  
21 CONCLUSIONS OF LAW

22 The Appellant has not sustained the burden of showing that the  
23 Examiner erred in rejecting claims 1-3 and 9 under 35 U.S.C. § 103(a) as  
24 unpatentable over Yap and Agnihotri.

1 The Appellant has not sustained the burden of showing that the  
2 Examiner erred in rejecting claim 10 under 35 U.S.C. § 103(a) as  
3 unpatentable over Yap, Agnihotri, and Kanemitsu.

4  
5 DECISION

6 To summarize, our decision is as follows.

- 7 • The rejection of claims 1-3 and 9 under 35 U.S.C. § 103(a) as  
8 unpatentable over Yap and Agnihotri is sustained.
- 9 • The rejection of claim 10 under 35 U.S.C. § 103(a) as unpatentable  
10 over Yap, Agnihotri, and Kanemitsu is sustained.

11  
12 No time period for taking any subsequent action in connection with this  
13 appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

14  
15 AFFIRMED

16  
17  
18 mev

19  
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